

Date Mailed
September 24, 1999

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

In the Matter of Proposed Revision of Chapter PSC 4, Wis. Adm.
Code – Rules for Environmental Analysis

1-AC-185

NOTICE OF HEARING

Hearing Date:	Tuesday, October 26, 1999– 1:30 p.m.
Hearing Location:	Public Service Commission, 610 North Whitney Way, Madison, WI (Amnicon Falls Hearing Room - 1st Floor)

This docket proposes to revise ch. PSC 4, Wis. Adm. Code. These rules currently describe procedures to provide the Public Service Commission of Wisconsin with adequate information on the short-term and long-term environmental effects of its actions, as required by the Wisconsin Environmental Policy Act (WEPA), ch. 274, section 1, laws of 1971 and s. 1.11, Stats.

Summary and Analysis of Rules

Statutory authority: ss. 196.02(3) and 227.11, Stats.
Statute interpreted: s. 1.11, Stats.

Section 1.11, Stats., is known as the Wisconsin Environmental Policy Act (WEPA). This statute requires each state agency to consider and make known to the public the environmental impacts of any major action the agency is proposing, if the action would significantly affect the quality of the human environment. The Public Service Commission (Commission) has adopted rules to implement WEPA.

The Commission's rules categorize various actions the Commission undertakes in three separate tables and describe when an environmental impact statement (EIS) or a preliminary document known as an environmental assessment (EA) must be prepared for these actions. Table 1 consists of "Type I" actions, which the Commission has determined are major actions significantly affecting the quality of the human environment. The rules specify that an EIS must be prepared for any Type I action. Table 2 consists of "Type II" actions, which the Commission has determined have the potential to significantly affect the quality of the human environment. The rules require the Commission to prepare an EA for each Type II action; the function of an EA is to provide a preliminary factual investigation of the action's environmental impacts.

Under current rules this preliminary investigation allows the WEPA coordinator, who is a qualified staff person designated by the Commission, to determine whether an EIS is necessary. For Type II actions, the WEPA coordinator also has the option of making a determination that an EIS is needed based on the information that is immediately available, without waiting for an EA to be completed. Table 3 consists of “Type III” actions, which the Commission has found do not normally have the potential to significantly affect the quality of the human environment. Type III actions normally require neither an EA nor an EIS, although an evaluation of a specific Type III proposal may indicate that preparation of such a document is warranted.

These proposed rules remove the WEPA coordinator’s authority to determine whether an EIS or an EA is required. Instead, this authority reverts to the Commission. The proposed rules also change the Type I, II, and III lists, in order to base the level of required environmental review on the potential for significant impacts rather than the current arbitrary thresholds. In addition, they change the process of preparing an EA. The proposed rules focus the EA on determining the need for an EIS, rather than using it to provide an encyclopedic description of potential environmental impacts. Finally, the proposed rules modify the process of securing public input during the Commission’s review process, so it can be received at appropriate times.

WEPA coordinator authority

Under current rules, the WEPA coordinator determines whether a proposed action of the Commission would significantly affect the quality of the human environment, for which an EIS must be prepared. If a project’s environmental effect is less certain the WEPA coordinator may direct that an EA be completed, and may then decide whether the EA shows that an EIS is required. The proposed rules specify that the Commission will make these determinations.

Changes to the Type I, II, and III lists

The proposed revisions to the Type I, II, and III lists concern the proper categorization of electric generating facilities and electric transmission lines. Current rules use the size in megawatts (MW) of a proposed new generating unit as the primary indicator of whether an EA or EIS should be prepared. An application for Commission approval of any new unit whose capacity is 20 MW or more is currently considered a Type I action, for which an EIS is mandatory. If the project would have a capacity of less than 20 MW, it is currently considered a Type II action. The proposed rules categorize a new generating unit according to the type of fuel it would use and the site where it would be located. Any new unit that would be powered by nuclear energy or fueled by coal is included in the Type I list. Combustion turbine facilities, combined cycle facilities, and cogeneration facilities that use gas or some other fuel are also included in the Type I list, but only if they would be constructed at a new electric generation site. If they would be located at an existing generation site, they are Type II projects. A similar distinction is made for hydroelectric facilities; if located at a new dam site, the project would be a Type I action, but if located at an existing dam site, the project is a Type II action.

Other Type II generating projects under these proposed rules would be new biomass or waste-to-energy units. A project to change an existing generating unit by adding another fuel type for the unit is also considered a Type II action. The proposed rules list new wind-powered electric generating facilities, less than 10 MW in size, and any new solar-powered facilities, as Type III actions. A proposal to construct any other new electric generating facility, not specifically listed elsewhere, is considered a Type II action.

Under existing rules, a proposal to construct, rebuild or upgrade a new electric transmission line at a voltage of 100 to 345 kilovolts (kV) is considered a Type II action if the new line would be more than one mile long. The proposed rules delete the criterion of length and substitute a criterion concerning where related construction activity occurs. If any construction activity takes place outside the area of an existing transmission line right-of-way, the project is classified as a Type II action. If all construction activity occurs inside existing transmission line right-of-way, the project is considered a Type III action. This criterion is modeled after a recently enacted statutory exemption that is found in s. 196.491 (4) (c), Stats., declaring that a Certificate of Public Convenience and Necessity is not necessary to build a new transmission line of less than 230 kV if “all related construction activity takes place entirely within the area of an existing electric transmission line right-of-way.” (A Certificate of Authority under s. 196.49, Stats., may still be necessary for such a project, depending on its cost.)

The proposed rules add two other items to these tables. Existing rules of the Department of Natural Resources (DNR) classify as Type II actions any proposals to adopt long-range agency plans or policies that would predetermine future agency actions, if the future actions may significantly affect the human environment. The proposed rules include the same item in the Commission’s list of Type II actions. In addition, the proposed rules address a new action of the Commission that was created by 1997 Wisconsin Act 204. Under s. 196.491 (3m) (a), Stats., an affiliated interest of a public utility may not own, control, or operate a wholesale merchant plant without first securing the Commission’s approval. The proposed rules list this as a Type III action.

Changes to the process of preparing an EA

The purpose of an EA has been defined by federal regulations issued by the Council on Environmental Quality, and by case law interpretations. An EA is intended to be a concise document that provides sufficient evidence and analysis of potential environmental impacts to determine whether preparation of an EIS is necessary. This purpose, however, is not described in Commission rules and those prepared in recent years have begun covering all potential impacts associated with a proposed project, including minor environmental impacts. The proposed rule incorporates a declaration of the purpose of EA preparation, to provide direction to Commission staff.

Public notice

Current rules require the Commission to deliver an announcement that it is commencing the preparation of an EA to area legislators, news media, and others whom the Commission knows are interested. The announcement must establish a public comment period, lasting at least 10 days. The proposed rule provides a broader list of those receiving the announcement of an EA. It includes any person who has requested to receive this type of information, and local government representatives such as the heads of local municipalities and county clerks. The proposed rule also removes the deadline for public comment, in order to allow comments to be received at any point during the process of preparing an EA.

Current rules allow the Commission's WEPA coordinator to make a preliminary determination about the need for an EIS before the EA is completed. If such a preliminary determination is made, the Commission must notify the same group and provide at least 10 days for public comment on the determination. The proposed rule revises this process. It grants the authority to make a preliminary determination about the need for an EIS to the Commission, as described above, and specifies that this determination must occur after the EA is completed. Notice of this preliminary determination will then be issued; in addition, the proposed rule provides that the Commission will make copies of the EA available upon request. A 15-day period for public comment on the determination is specified in the proposed rules. Based on the EA and the comments received, the Commission then makes a final determination as to whether the project constitutes a major action for which an EIS is required. The proposed rule also states that a copy of the EA will be sent to municipal offices in the project area.

Other changes

The proposed rule describes a process by which a supplemental EA or supplemental EIS can be prepared. The proposed rule declares that a supplemental EA must be produced if, after an EA has been completed but before the Commission has taken action, new circumstances or information arise that the Commission decides could affect the quality of the human environment in a manner not considered in the EA. Similarly, a supplemental EIS must be produced if new circumstances or information arise that the Commission decides would affect the quality of the human environment in a manner not considered in the EIS.

Current rules require anyone who seeks Commission approval of a project to contact the Commission at least 30 days before filing their application. This advance notice allows the Commission to provide advice on the project alternatives that should be analyzed and on other agencies that must be contacted. The proposed rule limits this advance notice to Type I and Type II projects, but requires that notice of such projects must occur at least 30 days before the applicant provides an engineering plan to the DNR. This change will ensure that the environmental and engineering analysis of reasonable alternatives, which is required by s. 1.11 (2) (c) 3, Stats., is properly coordinated with the DNR.

Anyone wishing to receive a free copy of the proposed rules should contact the case coordinator listed below.

Fiscal Estimate

Attached to this notice is the Fiscal Estimate prepared by the Commission.

Initial Regulatory Flexibility Analysis

The proposed rules are not expected to affect small businesses. The changes in classification of projects will not increase the compliance or reporting requirements for project applicants. In addition, it is unlikely that applicants for Commission approval of these projects would be small businesses.

NOTICE IS GIVEN that a hearing will be held beginning on Tuesday, October 26 1999, at 1:30 p.m. in the Amnicon Falls Hearing Room at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin, and continuing at times to be set by the presiding Administrative Law Judge. The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. This building is accessible to people in wheelchairs through the Whitney Way first floor (lobby) entrance. Parking for people with disabilities is available on the south side of the building. Any person with a disability who needs additional accommodations or who needs to obtain this document in a different format should contact the case coordinator listed below.

Questions from the media may be directed to Jeffrey L. Butson, Public Affairs Director, at (608) 267-0912.

Questions regarding this matter may be directed to Kathleen Zuelsdorff at (608) 266-2730.

Dated at Madison, Wisconsin, _____

By the Commission:

Lynda L. Dorr
Secretary to the Commission

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